

REMARKS:

Status of the Claims

Claims 1-24 were originally filed. In the December 7, 2006 Amendment, claims 1-17 and 19-24 were canceled, claim 25 was added. Claims 18 and 25 stand rejected in the January 19, 2007 Office Action. In this Amendment, claims 18 and 25 are canceled, without prejudice. New claims 26-29 are added. No new matter is introduced. Upon entry of this amendment, claims 26-29 will be pending. Applicants respectfully request reconsideration and withdrawal of rejection in view of the following remarks.

The Present Invention

The present invention is directed to a **continuous liquid** flavor or fragrance system that comprises a flavor or fragrance material and a cellulose polymer. The disclosed system provides release characteristics desired for the flavor/fragrance delivery.

Claim Objections

Claims 18 and 25 are objected because of the informalities. To expedite the prosecution, Applicants cancel claims 18 and 25, without prejudice. Accordingly, this objection is considered to be moot.

Claim Rejections Under 35 U.S.C. § 112

Claims 18 and 25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Examiner alleges that the ranges recited are indefinite because they are so broad that the combined ingredients can comprise more than 100%. To expedite the prosecution, Applicants cancel claims 18 and 25, without prejudice. Accordingly, this rejection is considered to be moot.

Claim Rejections Under 35 U.S.C. § 102

Claims 18 and 25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by El-Nokaly (US 5,599, 555). Examiner alleges that El-Nokaly teaches liquid crystals that are comprised of A) 0.001-60% active ingredient (including edible oils) and B) 40 to about 99.999% of a liquid crystal containing 1) about 10 to about 90 percent solvent (including flavor oils), 2) 10-90% polysaccharide (e.g., ethyl and hydroxypropyl celluloses) and 3) emulsifiers (e.g., fatty acid monoglycerides) (*See*, Office Action, page 3, lines 17-24). Examiner continues to allege that since both the active ingredient and the solvent in the liquid crystal can be flavor oils, the upper limit for the flavor oil in El-Nokaly could be as high as about 96% (*See*, Office Action, page 4, lines 1-5). Applicants respectfully disagree.

El-Nokaly's invention is directed to an encapsulated active vehicle, within which a polymeric liquid crystal is contained. The polymeric liquid crystal comprises about 10-90 percent solvent and about 10-90 percent polysaccharide (*See*, El-Nokaly, Abstract). El-Nokaly discloses that reaction conditions such as solvent concentration and temperature are critical in the preparation of polymeric liquid crystal (*See*, El-Nokaly, col. 3, lines 25-28). Consistently, El-Nokaly also discloses a polymeric liquid crystal can only be induced/formed when a particular ratio of the polymer and solvent is achieved (*See*, El-Nokaly, col. 2, lines 24-35). Thus, it is believed that one skilled in the art would not be motivated to employ a solvent concentration outside the range taught by El-Nokaly, which would adversely affect the formation of a liquid crystal. Accordingly, Applicants respectfully submit that El-Nokaly does not suggest an amount of the flavor oil as high as about 96% (*See*, Office Action, page 4, lines 1-5). More importantly, El-Nokaly specifically teaches that a liquid crystal is distinguishable from other polymeric systems including isotropic solutions (*See*, El-Nokaly, col. 3, lines 25-40). On the contrary, a liquid, also called an isotropic solution, is clearly defined in the Specification of the present invention as being contrast to a crystalline structure (*See*, Specification, page 5, lines 3-12). Further, both independent claims 26 and 27 of the present invention recite "A **continuous liquid** flavor or fragrance system". To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference,

arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991) The claimed limitation of a continuous liquid can not be found in El-Nokaly. For at least these reasons, Applicants respectfully request that this 35 U.S.C. § 102 rejection be withdrawn.

Claim Rejections Under 35 U.S.C. § 103

Claims 18 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over El-Nokaly (US 5,599, 555).

As discussed above, El-Nokaly neither teaches nor suggests the claimed limitation of a continuous liquid. In fact, El-Nokaly explicitly teaches away a liquid (*See*, MPEP 2143).

Further, as expressly taught by El-Nokaly, polymeric systems other than a liquid crystal are not desired (*See*, El-Nokaly, col. 3, lines 25-40). A modification with the present invention which would arrive at a liquid/an isotropic solution would render El-Nokaly being modified unsatisfactory for its intended purpose. Thus, there is no suggestion or motivation to make such modification as proposed by the Examiner. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

Furthermore, El-Nokaly expressly teaches that a liquid crystal is distinguishable from an isotropic solution (*See*, El-Nokaly, col. 3, lines 25-40). A modification of El-Nokaly with the present invention would change the principle of operation of the prior art invention being modified. Thus, the teaching of El-Nokaly is not sufficient to render the present invention obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)

Accordingly, Applicants respectfully submit that the present invention is patentable over El-Nokaly. For at least these reasons, Applicants respectfully request that this 35 U.S.C. § 103 rejection be withdrawn.

CONCLUSION:

In view of the foregoing, Applicants respectfully request reconsideration, withdrawal of rejections, and allowance of all claims now present in the application.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment to the Deposit Account No. 12-1295.

Respectfully submitted,



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